

LAND USE COMMISSION
MEETING MINUTES
August 8, 2024 – 8:30 a.m.

Pursuant to Hawai'i Revised Statutes, HRS §92 as amended, the Commission conducted its meeting in person. Interested persons submitting written testimony were recommended to submit their written Statements 24 hours in advance of the meeting to allow for distribution to the Commission prior to the meeting.

IN PERSON: Airport Conference Center (in Hawaiian Airlines Terminal Building)
400 Rodgers Blvd., 7th Floor, IIT Suite 700, Room #3, Honolulu, HI 96819
YOUTUBE RECORDING: (<https://www.youtube.com/watch?v=6u722CLegfA>)

COMMISSIONERS PRESENT:

Dan Giovanni
Kū'ike Kamakea-Ōhelo
Mel Kahele
Brian Lee
Nancy Carr Smith
Bruce U'u
Myles Miyasato

STAFF PRESENT:

Daniel Orodener, Executive Officer
Scott Derrickson, Chief Planner
Martina Segura, Staff Planner
Ariana Kwan, Chief Clerk
Melissa Goldman, Esq. Deputy Attorney
General

COURT REPORTER:

Naegeli Deposition and Trial
(Via Zoom Recording)

CALL TO ORDER (YouTube: 00:00:08)

Chair Giovanni, called the meeting to order at 8:37 a.m.

APPROVAL OF THE MINUTES (YouTube: 00:03:03)

The first agenda item was the approval of the July 23-24, 2024, Minutes. There was no written testimony, or members of the public who wished to testify on the approval of the Minutes.

Commissioner Carr Smith moved to adopt the Minutes, and Commissioner Lee seconded the motion. The July 23-24, 2024, Minutes were approved with 7 ayes, 0 nays, and 2 excused.

TENTATIVE MEETING SCHEDULE (YouTube: 00:05:20)

Chair Giovanni called for LUC Staff to provide the Tentative Meeting Schedule. Executive Officer, Daniel Orodener provided the following tentative meeting dates:

August 21, 2024: SP73-147 Makakilo Quarry (O'ahu)
August 22, 2024: SP09-403 Waimanalo Sanitary Landfill (O'ahu)
September 4, 2024: SP73-147 Makakilo Quarry (O'ahu)
September 11-13, 2024: HCPO (Hawai'i)
October 9, 2024: DR24-77, RK II Partners (O'ahu)
October 10, 2024: OPSD Presentation (O'ahu)
October 23-24, 2024: SP21-412 Mahi Solar (O'ahu)
November 7, 2024: A07-772 A&B (Maui)
November 6, 2024: A07-773(a) Emmanuel Lutheran (Maui)

**CONFIRMATION OF FUNDS AND AUTHORIZATION FOR EXECUTIVE OFFICER SALARY
ADJUSTMENT IN FY 25 LUC BUDGET DESIGNATED AS BED 144DA** (YouTube: 00:07:55)

Commissioner Lee suggested to defer this agenda item to after agenda item V. Chair Giovanni accepted the suggestion to revise the order and moved to the next agenda item.



SP09-403 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (WAIMĀNALO GULCH SANITARY LANDFILL) (O’AHU) (YouTube: 00:08:37)

Application to Modify SP09-403 (SUP No. 2008 SUP-2) by Modifying: Condition No. 1 of the Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order, dated June 10, 2019, and Condition No. 5 of the LUC’s Findings of Fact, Conclusions of Law, and Decision and Order Approving with Modifications the City and County of Honolulu Planning Commission’s Recommendation to Approve Special Use Permit, certified on November 1, 2019.

Appearances

Petitioner

***City and County of Honolulu
Department of Environmental Services (“ENV”)***
Jeffrey Hu, Esq. Deputy Corporation Counsel
Kamilla Chan, Esq. Deputy Corporation Counsel
Dr. Roger Babcock, Director

***City and County of Honolulu
Department of Planning (“DPP”)***
Brad Saito, Esq. Deputy Corporation Counsel

***Office of Planning and Sustainable
Development (“OPSD”)***
Katia Balassiano, Land Use Development
Program Administrator
Allison Kato, Deputy Attorney General

Public

Ed Werner
Senator Kurt Fevella
DeMont Kalai Manaole

Intervenors

Schnitzer Steel Hawai’i Corporation
Joyce Tam-Sugiyama, Esq.
Ian Sandison, Esq.
Rihui Yan, Esq.

***Ko Olina Community Association (“KOCA”)
and Maile Shimabukuro***
Calvert Chipchase, Esq.
Christopher Goodin, Esq.
Katherine Bruce, Esq.

Disclosures (YouTube: 00:13:27)

Commissioners did not have any disclosures.

Update of the Record (YouTube: 00:17:31)

The Chief Clerk, Ariana Kwan informed the Commission that the Record transmitted from the City and County of Honolulu Planning Commission had inconsistencies involving Ko Olina Community Association and Maile Shimabukuro's (together “KOCA”) exhibit files. Staff reached out to Intervenor KOCA for copies of their exhibit files, which were provided to the LUC on August 6, 2024. Ms. Kwan confirmed that KOCA’s Exhibits K001 to K475 have been posted to LUC Website for public review.

Public Testimony Round One (YouTube: 00:19:22 - 00:41:37)

The Land Use Commission received two written testimonies prior to the meeting in support to give the city an extension to find a new landfill site as soon as possible.

Chair Giovanni opened the floor for public testimony. Three individuals expressed concerns about the landfill being on the west side, yet they still supported the request for extension of time.



Presentations (YouTube: 00:41:46 - 02:08:05)

ENV (YouTube: 00:43:00 - 01:18:31) provided their presentation on their application requesting an extension of time until 12/31/2024 for the city to identify a new landfill site. They explained that due to ACT 73 (2020) and the Honolulu Board of Water Supply (“BWS”) disapproval of all 6 potential sites, the city was unable to identify a new landfill site by the 12/31/2022 deadline.

Commissioners asked questions regarding ACT 73, BWS no pass zone, freshwater aquifer, if a 12/31/2024 extension is enough time to identify a new landfill site, Caprock, Federal/Military lands, consulting with CWRM, and BWS manager’s position.

County (YouTube: 01:18:37 - 01:20:15) provided their presentation in support of the time extension. Commissioners had no questions for the county.

OPSD (YouTube: 01:20:28 - 01:31:55) provided their presentation recommending approving the city’s application to extend the deadline to identify an alternative landfill site. Commissioner asked questions regarding the permit expiration, water issues, and questioned why the Board of Water Supply was not in attendance.

Schnitzer Steel Hawaii (YouTube: 01:32:05 - 01:35:53) provided their presentation in support of the time extension. Commissioners had no questions for the intervenor.

KOCA (YouTube: 01:36:20 - 01:52:23) provided their presentation requesting that the Commission approve the Planning Commissions Proposed FOF COL D&O with the unopposed reporting Condition No. 2. Commissioners asked questions regarding why the other Conditions didn’t need to be extended, and other criteria for siting a new landfill.

ENV (YouTube: 01:53:15 - 02:08:05) The Commission asked to bring Dr. Roger Babcock forward for questioning. The Commission asked questions regarding how much life the landfill has, space availability, construction demolition, what happens if the deadline is not met, and H-Power.

Public Testimony Round Two (YouTube: 02:08:03 - 02:34:08)

Chair Giovanni invited public testimony on this matter. The same three individuals provided additional testimony. While they reiterated their concerns about the current landfill location, and that the city has a responsibility to the people, they continued to support the extension request to allow time for finding a new site.

Deliberations (YouTube: 02:36:31 - 02:46:46)

Commissioner Miyasato moved to grant the city’s application for extension of time, with modification to Condition No. 2 adding the city to also report quarterly to the LUC. Commissioner Kamakea-‘Ōhelo seconded the motion. The Commission asked the petitioner to provide copies of transcripts from the county quarterly in person meetings and any copies of exhibits or evidence put on the record. The motion was approved with 7 ayes, 0 nays, and 2 excused.

LUNCH REQUEST (YouTube: 02:47:38 - 02:48:10)

The Land Use Commission next meeting will be held on August 21st at the FILCOM, with limited access to restaurants, and the Commission intends to work through lunch, it was requested that Staff arrange for lunch to be provided to the Commission.



CONFIRMATION OF FUNDS AND AUTHORIZATION FOR EXECUTIVE OFFICER SALARY ADJUSTMENT IN FY 25 LUC BUDGET DESIGNATED AS BED 144DA (YouTube: 02:49:19)

Chair Giovanni asked for a moment of silence to acknowledge the one-year anniversary of the Lahaina fires.

The Land Use Commission discussed the salary adjustments for the Executive Officer for FY25, focusing on the interpretation of HRS §205-1 regarding the Commission's authority to hire and manage personnel. The Chair requested a legal opinion in layman's terms, and the Attorney General's office asked for a formal email request to proceed with the clarification. Mr. Orodener referred to HAR §15-15-07, defining the Executive Officer's role and responsibilities under the Commission's oversight.

Chair Giovanni noted that budget inconsistencies raised in a recent letter are common across multiple boards within DBEDT, with the department working on standardized budgeting and performance evaluation processes. Commissioner Lee expressed frustration over historical transparency issues.

Commissioner Lee questioned Mr. Orodener about not disclosing that he had applied for a job in Maui around the time of his salary discussion and evaluation suggesting potential ethical concerns given they were holding a public meeting in Maui with the Planning Department present. Commissioner Lee also pointed out that the job Mr. Orodener applied for was a lower salary than he is currently receiving and would have had to go through the East Maui water authority, the mayor of Maui, and finally the County Council in Maui for approval. Mr. Orodener responded that he does not use potential job offers as leverage in negotiations and felt disclosing such information could jeopardize his current position. He denied any impropriety or conflict of interest, stating he was not aware that the position required County Council approval. Commissioner Lee acknowledged Mr. Orodener's explanation but maintained that disclosure might have been appropriate due to the circumstances.

Commissioner Carr Smith raised concerns about discrepancies in the reported pay amounts for the Executive Officer in the FY25 budget. This led to a broader discussion on budget transparency. Mr. Orodener discussed the budget process, highlighting the involvement of the Department of Budget and Finance (B&F), which often re-evaluates personnel numbers to create a more acceptable budget. He expressed frustration over a decade of incorrect budget numbers, particularly for staff. Orodener clarified that their budget primarily covers personnel, travel, and office supplies.

Chair Giovanni acknowledged these challenges and stressed the necessity for a standardized and transparent budgeting process across departments, suggesting that the prevalent use of vacancy funds to balance budgets, though widespread, was not an ideal practice. The session concluded with an acknowledgment of the need for a new, detailed standardized procedure, underscoring the importance of transparency and involvement in future budget preparations.

ADJORNMENT (YouTube: 04:00:57)

Chair Giovanni adjourned the meeting at 1:44 p.m.